DUI SEMINAR

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MAXIMIZING DIRECT EXAMINATION

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Maximizing Direct Examination

Getting the Maximum Benefit From the Direct Examination of your Police Officer





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Get Prepared to Direct!



 Before you ever get to questioning your officer, you have to BE PREPARED!

Prepare Yourself

- . How?
 - Read and re-read the police report
 - Check for additional reports, supplements, witness statements
 - Check for and obtain photos (may want booking photo or MVD color photo), 911 calls, videos, etc.
 - Pre-mark any evidence, disclose ahead of trial
 - If DUI Drugs, check PDR, consult w/ officer, DRE, toxicologist

Prepare Yourself, cont.

- Tell your officers, witnesses when you know case is set for trial
- Talk to your officer before trial! Direct examination should not be the first time you discuss the case!
- Anticipate defenses
 - Suppression motions
 - Notice of Defenses
 Follow your gut
- Share anticipated defenses with Officer, Toxicologist, consult w/ fellow prosecutors
 - Not many novel defenses

Prepare Yourself, cont.

- Learn the location Go to the scene, Google Maps, Google street view
- · Prepare diagrams, maps if necessary, show
- Find out about the conditions on the DOV
 - weather
 - lighting
 - · construction, lane closures, etc.



Make a Blueprint

- · Write down goals, elements, important areas, foundational requirements, etc.
- Avoid writing down every question to ask officer
 - Officer may stray from your script
 - · You will need to adjust script on-the-fly
 - · You may be focusing on next question in script, not listening to officer
- · Instead, highlight important areas, check off as completed

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OK, You're Fully Prepared

- · How do we effectively present our evidence?
 - Paint a picture, tell a story neither the judge nor the jury know the facts (judge may know some)



How to Evoke the Story?

- We want your questions and the officer's testimony to be:
 - Simple
 - Logical (and likely chronological)
 - and Interesting, if not exciting
 - May be difficult, not all DUI's are very exciting

Introduction

- Your officer is on the stand, he/she is dressed appropriately. Let's get to know him/her!
- Officer, please introduce yourself to the jury.
- Could you briefly explain your training and experience in becoming a police officer? How long have you been a police officer?
- If brand new officer still ask?

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DUI or DRE Officer

- If your officer has specific training in detecting drivers under the influence of alcohol/drugs, such as HGN/SFST school, ARIDE, DRE certification, or is an instructor in those areas, have the officer explain their training and experience.
- If your officer was on DUI patrol or a DUI task force, don't hide that fact. Defense attorney: You were out looking to arrest someone for DUI that night, correct? That's the officer's job, and they succeeded!

Questions for Your Officer

- Ask some open-ended questions that allow your officer to tell a story in a clear, concise, logical and persuasive manner: Tell the jury what you observed when you arrived on the scene.
- Use indicators in your questions to guide the officer's answers:
 - Let me direct you to the evening of March 3rd
 - Let's talk about the HGN test
 - Let me turn your attention to ...

Questions, cont.

- . Don't make questions TOO open-ended
- Don't be vague
 - Ex.: What was the defendant doing?"
- Ask direct, specific questions
 - Ex.: Did you see the defendant driving?





Challenge the Officer

- For questions that might be in contention:
- How can you be sure it was the defendant you saw driving?
- How can you tell that the defendant's tires drove outside of the lane line?
- Do you arrest everyone who merely has bloodshot eyes for DUI??

Be a Good Listener



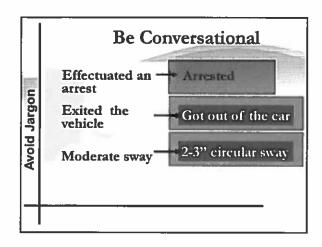
- Officer may stray from script
- Looks bad if you ask a question that was already answered
- If you're not listening to the officer, the jury may not listen

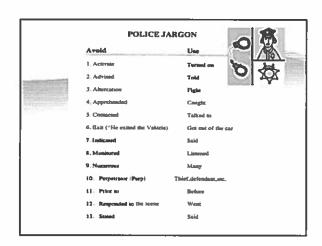
Avoid Professional Jargon

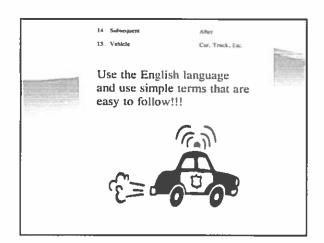
Be Conversational-help the witness tell the story in a natural, easy to understand, methodical and compelling manner



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Anticipate and Preempt Defenses



- Anticipate and pre-empt your opponent's crossexamination
- Admit other causes for individual signs and symptoms –then emphasize totality of circumstances
- · Admit mistakes in report if known
- Honesty is the best policy-everyone makes mistakes. Does officer's mistake lessen evidence of defendant's guilt?

Mistakes

 Inform the officer before trial is he/she makes a mistake while testifying to correct it as soon as possible-shows sincerity, enhances credibility



Field Sobriety Tests



FST's vs. SFST's

- Both are useful tools in determining impairment
- SFST's are standardized and systematic, used by police departments around the country
- Officer did not "make up" either the FST's or SFST's, been trained, pre-printed in report

HGN

- Lay the proper foundation
- Emphasize the officer's training and experience
- Don't relate the angle of onset to a BAC level
- Officer can testify in their opinion if defendant is above or below a .08% BAC

Other FST's

- Not looking for perfect performance-even sober people don't always perform flawlessly
- · Arrest not based solely on FST performance
- Not a game of numbers, or how many times did someone get wrong, but a tool to help determine if a suspect is under the influence
- To demonstrate or not to demonstrate?

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Chemical Tests



- Breath Test Operator
 - · Highlight training and experience
 - Administered in accordance with training and rules
- Maintenance Officer
 - Frequently highly skilled technicians
 - Tested equipment on regular basis, followed protocols

Chemical Tests, cont.



- Blood collection
- Officer observed blood draw
- · Drawn by qualified phlebotomist
- Used standard police-issued blood alcohol collection kit for DUI's
- · Inverted tubes or watched tubes inverted
- Urine
 - Be aware if female suspect, male officer, visa-versa, who watched urine collection?

Evidence



- · Previously disclosed
- · Show to defense attorney
- When showing to officer, make sure jury can see
- If publishing, wait until jury is done before asking your next question
 - · Jury may not listen to next question
 - · May think evidence is not very important

Some Things to Avoid



- Mention of suppressed evidence
- · Comment on defendant's rights
- Fuenning violations

Make sure officer is aware of these things before they testify!

What is Most Important Thing?



Sorry, Charlie!

The most important thing is seeing that Justice is done.

- Be honest
- Don't be abrasive (that's defense attorney's job)
- Control your reactions
- Be comfortable-find your style

Questions?	
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